

IN THE CIRCUIT COURT OF LEE COUNTY
IN THE STATE OF ALABAMA

NC-WC LP
PLAINTIFF

Vs.

CASE NO. CV 2006 186

DAVID STIVARIUS, MALISSA ADELL LEE,
DELTA PROPERTIES, ALAN K. FLEMING and
UNITED STATES DEPT. OF TREASURY-
INTERNAL REVENUE SERVICE
DEFENDANTS

ALIAS SUMMONS

NOTICE TO DEFENDANT: UNITED STATES ATTORNEY'S OFFICE ON BEHALF OF
THE INTERBNAL REVENUE SERVICE, ATTENTION ALICE MARTIN AT 1801 4TH AVE.
NORTH, BIRMINGHAM, AL 35203

The complaint, which is attached to this summons, is important and you must take immediate action to protect your rights. You or your attorney are required to mail or hand deliver a copy of the written answer, either admitting or denying each allegation in the complaint to the plaintiff's attorney, Gary S. Olshan, P.O. Box 3020, Birmingham, Alabama 35202 within thirty (30) days after service of this summons and to file the original of said written answer with the Clerk of the court at the time of service of the answer on the attorney of record of the plaintiff or within a reasonable time thereafter. If you fail to do so a judgement by default may be entered against you for the relief requested in the complaint.

Dated: 4/28/06 Clerk of the Court: Carine T. Hurst

Address of Clerk: 2311 GATEWAY DRIVE, OPELIKA, AL 36801

A) To any sheriff or any person authorized by either rule 4.1(b)(2) or 4.4(b)(2) of the Alabama Rules of Civil Procedure: You are hereby commanded to serve this summons and a copy of the complaint in this action upon defendants.

B) This service by certified mail of this summons is initiated upon the written request of Plaintiff pursuant to Rule 4.1(c) of the Alabama Rules of Civil Procedure.

Date

CLERK/REGISTER

RETURN OF SERVICE

a) Certified mail return receipt received to Clerk's office on _____ (Date)

b) By Sheriff/Process server returned on _____ (Date)

Sheriff/Process Server Signature

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IN THE STATE OF ALABAMA

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PLAINTIFF

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IN THE CIRCUIT COURT OF LEE COUNTY
STATE OF ALABAMA

ALIAS

FILE
APR 28 2006

NC-WC LP, plaintiff

vs.

Case No. CV 2006-126

IN OFFICE
CORINNE T. HURST
CIRCUIT CLERK

DAVID STIVARIUS, MALISSA ADELL LEE
DELTA PROPERTIES, ALAN K. FLEMING
And UNITED STATES DEPT. OF TREASURY-INTERNAL
REVENUE SERVICE, defendants

STATEMENT OF FACTS:

1. Plaintiff NC-WC LP (hereinafter referred to as "NC") is an Delaware limited partnership with an address of 4100 Greenbriar, Suite 180, Stafford, Texas 77477.
2. Defendant David Stivarius (hereinafter referred to as "DS") is an Alabama resident with an address of 180 Lee Road 845, Valley, Alabama 36854; Defendant Malissa L. Hagler (hereinafter referred to as "MH") is a Mississippi resident with an address of 616 26th St, #A, Columbus, GA 31904-8531; Defendant Delta Properties (hereinafter referred to as "DP") is an Alabama corporation with an address of 401 11th St, Tallahassee, AL 36008; Defendant Alan K. Fleming (hereinafter referred to as "AF") is a Georgia resident with an address of 6261 Seminary Road, Columbus, GA 31904; and United States Department of Treasury, Internal Revenue Service (hereinafter referred to as "IRS") is an agency of the United States government with an address of 1555 Poydras Street, Site 220, Stop 65, New Orleans, Louisiana 70112-3747.
3. DS and MH own as tenants in common with right of survivorship 4.42 unimproved acres in Lee County, Alabama and legally described as: that tract or parcel of real estate situated and lying in Section 22, Township 18 North, Range 30 East, Lee County, Alabama and more particularly described in Exhibit A, attached hereto and incorporated herein as if set out in full below (hereinafter referred to as "the property").
4. DP holds tax title deed to the property by virtue of tax sale held on May 4, 2005. AF holds a sheriff's deed to the property by virtue sheriff's sale on that judgment styled AF v. DS, DV 2004 952, District Court of Lee County, Alabama in the amount of \$5725.00, the deed is recorded at Book 2214, Page 835 and is dated May 17, 2005. Defendant IRS holds three (3) federal tax liens on the property listed as \$14,4430.31 in Book MM, Page 672, dated March 1, 2005, \$18,084.24 in Book NN, Page 360 dated July 9, 2004 and \$46,606.17 in Book PP, Page 34 dated April 4, 2005.
5. DS and MH executed a note and mortgage to SouthTrust Bank on the property dated September 12, 2002 in the amount of \$30,000.00 and recorded on September 23, 2002 in Mortgage Book 2900, Page 759 (hereinafter referred to as "the mortgage").
6. The mortgage was transferred by SouthTrust Bank to NC on September 15, 2005 and has a principal and interest balance in the amount of \$28430.36 balance through January 31, 2006 with a per diem in the amount of \$6.30.

7. Demand has been made upon DS and MF for the balance of the mortgage but no the balance remains due, outstanding and delinquent.
8. The mortgage did not contain a power of sale clause.

Count I. – Complaint for Foreclosure

9. NC seeks judicial foreclosure of the mortgage pursuant to Code of Alabama §35-10-3 due to the condition broken in default in the payment of the mortgage.

Count II – Redemption

10. NC seeks redemption from DP from that tax sale and pay all taxes paid by DP plus all charges including but not limited to interest as allowed by law and ordered by this Court.

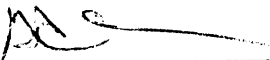
Count III-Declaration of Property Interest and Priorities

11. NC seeks declaration of the rights and establishment of priorities of title of NC and all defendants to and in the property as in relation to each other.

WHEREFORE, Plaintiff prays for the following relief:

- a. The Court take jurisdiction and set and order judicial foreclosure of the mortgage;
- b. The Court determine and decree that Plaintiff is the sole owner of the property as described in the complaint after and by virtue of foreclosure;
- c. That the Court take jurisdiction of this cause and that all Defendants be made party defendants to these actions;
- d. That each of the Defendants be required to answer, plead or respond to these claims herein within the time prescribed by law and they show, if that can, why relief prayed for herein should not be granted;
- e. Redemption be allowed by Plaintiff from tax sale and divesture of DP of tax title
- f. Award Plaintiff the costs of suit as incurred herein and attorney's fees for bringing this action; and
- g. For such other and further relief as the Court deems proper.

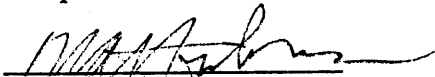
Respectfully Submitted,



Gary S. Olshan P.C. by Gary S. Olshan (205) 313-2565
P. O. Box 3020, Birmingham, Alabama 35202

Verification

The undersigned Plaintiff verifies that the information contained in the foregoing complaint are true and correct to the best of his knowledge and belief.



Michael Hrebénar
Authorized signatory for NC-WC LP